

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

Omar McCleod,	)	
	)	C/A No. 4:04-cv-02655-MBS-TER
Plaintiff,	)	
	)	
vs.	)	
	)	<b>O R D E R</b>
Albert Bellamy, Officer at J. Reuben	)	
Long Detention Center; and Brandon	)	
Chrisco, Officer at J. Reuben Long	)	
Detention Center, et al., official capacity,	)	
	)	
Defendants.	)	
	)	

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Plaintiff Omar McCleod is a inmate in custody of the South Carolina Department of Corrections. He currently is housed at Lieber Correctional Institution in Ridgeville, South Carolina. Plaintiff, proceeding *pro se*, brings this action pursuant to 42 U.S.C. § 1983, alleging that Defendants Albert Bellamy and Brandon Chrisco used excessive against him in violation of his rights under the Eighth Amendment.

This matter is before the court on Defendants' motion for summary judgment filed January 20, 2005. By order filed January 19, 2005, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), Plaintiff was advised of the summary judgment procedure and the possible consequences if he failed to respond adequately. On February 9, 2005, Plaintiff moved for an extension of time to respond to the motion. Plaintiff was granted until April 12, 2005 to file a response, and was cautioned that the failure to respond would subject the case to dismissal for failure to prosecute. Plaintiff filed no response to Defendants' motion.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Thomas E. Rogers, III for a Report and Recommendation. The

Magistrate Judge filed a Report and Recommendation on April 18, 2005 in which he recommended that the complaint be dismissed pursuant to Rule 41(b), FRCP for failure to prosecute. Plaintiff filed no objections to the Report of Magistrate Judge.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of objections to the Report, this court is not required to give any explanation for adopting the recommendation. Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

The court has reviewed the record thoroughly. The court adopts the Report and Recommendation and incorporates it herein by reference. Accordingly, the case is dismissed *with prejudice* pursuant to Rule 41(b) for failure to prosecute.

**IT IS SO ORDERED.**

/s/ Margaret B. Seymour  
United States District Judge

Columbia, South Carolina  
May 13, 2005.

**NOTICE OF RIGHT TO APPEAL**

**Plaintiff is hereby notified that he has the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.**